male, and to the heirs male of the body of such heir male, did not come within the rule. (1599 C. P.) Coke, Pt. I, 66b. In England this interpretation has been generally limited, due to the fact that at the death of the life tenant there can be but one heir, to cases where the word "heir" is used in the singular, "heirs" necessarily signifying successive generations. *Wright v. Pearson* (1758, Ch.) 1 Amb. 358. Although a slight change in wording may affect the interpretation of the intention of the grantor or testator, so that each case must be decided independently, some general conclusions can be drawn. Where the remainder is to the heirs of the life tenant, their heirs and assigns, by the weight of authority, an indefinite succession is meant and the rule applies. *Harrison v. Harris* (1914) 245 Pa. 397, 91 Atl. 617; *Ryan v. Ryan* (1919) 138 Ark. 362, 211 S. W. 183. Words of similar import have a like effect; a remainder to the heir "forever" or "in fee" gives a fee to the life tenant. *Silcocks v. Silcocks* [1916] 2 Ch. 161; *Stathers v. Renz* (1916) 251 Pa. 315, 96 Atl. 717. "In fee simple and forever" is interpreted in the same way. *Roberson v. Moore* (1915) 168 N. C. 388, 84 S. E. 351. But a remainder to the "heirs" (in the United States) or "heir" (in England) "absolutely" has been held not within Shelley's rule. *Westcott v. Meeker* (1909) 144 Iowa, 311, 122 N. W. 964; *In re Hussy and Green's Contract* (1921, Ch.) 37 T. L. R. 407. Where the course of descent is changed, as where the remainder is limited to the life tenant's bodily heirs and their heirs general, Shelley's Case is usually held not to apply. "Heirs of the body, their heirs and assigns," as in the instant case, makes "heirs of the body" words of purchase. *Aetna Life Ins. Co. v. Hoppin* (1914, C. C. A. 7th) 214 Fed. 928. A similar interpretation is given to a remainder to heirs of the body in fee simple. *Benson v. Tanner* (1917) 276 Ill. 594, 115 N. E. 191; *contra, Burton v. Carnahan* (1906) 38 Ind. App. 612, 78 N. E. 682. See 29 L. R. A. (N. S.) 963, note.

SURETYSHIP—CONTRACTOR'S BOND—PAYMENTS TO MATERIALMAN AS RELEASE OF SURETY.—The defendant surety company gave a bond to secure the faithful performance of a building contract. Although not parties to the bond, the materialmen were expressly protected by its terms. This action was brought to recover $15,790.13 for material furnished on the job by the plaintiff company, although it admitted having received more than that amount from the contractor while the building was being erected. The plaintiff knew the source of at least part of the funds from which these payments were made, and applied them to previous debts of the contractor. The plaintiff was also in a position to file a lien on a building fund of $15,000 which had been set aside by the owner, but failed to do so until after $10,000 had been withdrawn. *Held,* that the plaintiff could not recover. *Alexander Lumber Co. v. Aetna Accident & Liability Co.* (1921, Ill.) 129 N. E. 871.

According to the general rule, a debtor and creditor have the privilege and power of determining the application of a payment regardless of the interests of third parties, such as sureties. *Wyandotte Coal Co. v. Wyandotte Paving Co.* (1916) 97 Kan. 203, 154 Pac. 1012; *Irving v. Mutual Trust Co.* (1914) 82 N. J. Eq. 629, 90 Atl. 274. There are, however, several recognized exceptions. See 3 Williston, *Contracts* (1920) sec. 1804. The authorities are in conflict as to whether the facts of the instant case come within one of such exceptions. It has been held that under such circumstances, the surety is discharged. *Columbia Digger Co. v. Sparks* (1915, C. C. A. 9th) 227 Fed. 780; *Bross v. McNicholas* (1913) 66 Ore. 42, 133 Pac. 782; but see *contra, Chicago Lumber Co. v. Douglas* (1913) 89 Kan. 308, 131 Pac. 563; *People v. Powers* (1896) 108 Mich. 339, 66 N. W. 215. In analogous cases, where money has been received from a tax collector by a municipality, in ignorance of the source from which it was derived, the authorities seem to be uniform in holding that such money can be applied to previous indebtedness, due to default, though detrimental to

the sureties on the tax collector's bond for the current year. *Hudson v. Miles* (1904) 185 Mass. 582, 71 N. E. 63; *Grafton v. Reed* (1890) 34 W. Va. 172, 12 S. E. 767. The cases opposed to the holding in the principal case seem to rest on a sounder basis. There seems to be no reason in the instant case to deny to the creditor the usual power, in the absence of direction by the debtor, to apply payments as he sees fit. If the creditor does know the source of the money, it is the debtor's money and the reason for raising an equity in favor of the surety is not apparent. Moreover, there is no necessity for protecting surety companies by creating this equity in their favor, since they can protect themselves adequately by making proper express reservations in the surety bond. The fact that the security was reduced by the materialman's laches in filing a lien could not affect the liability of the surety company. Mere neglect on the part of a creditor to enforce his claim does not discharge the surety. *Lewis v. Blume* (1917) 226 Mass. 505, 116 N. E. 271; *Villars v. Palmer* (1873) 67 Ill. 204. Even if a prior lien had been relinquished it would merely discharge the surety *pro tanto*. *Sterne v. Bank of Vincennes* (1881) 79 Ind. 549; *Holmes v. Williams* (1898) 177 Ill. 386, 53 N. E. 93. Thus it would seem that the plaintiff should recover, since neither the application of the payments to prior indebtedness nor the failure on the part of the materialman to utilize possible security should discharge the surety.

TRUSTS—GIFT OF AN UNINDORSED CERTIFICATE OF STOCK—ANTECEDENT POSSESSION BY THE TRUSTEE.—The settlor bought and sold all of her securities through a friend, who kept them in her safe deposit box. The stock was registered in the settlor's name and the dividends paid directly to her. A year before her death they went together to the vault and the settlor told her friend that at her death the stock was to be distributed among certain beneficiaries. The latter consented to supervise the distribution on condition that a third party make the actual delivery to the beneficiaries. Thereafter none of the stock was sold and the settlor never exercised control over it. She made no will. The trustee was ready to carry out the trust, but the agent refused to deliver the stock and notified the public administrator that it was intestate property. The beneficiaries brought this action to establish the trust, joining as defendants the trustee, the agent, and the public administrator. *Held*, that the stock was to be held in trust to be distributed to the beneficiaries subject to the decedent's life interest in the dividends. Jenks, P. J., and Putnam, J., *dissenting*. *Orton v. Tannenbaum* (1920) 194 App. Div. 214, 185 N. Y. Supp. 681.

The instant case follows the modern tendency in applying a similar rule to gifts of non-negotiable choses in action and to gifts of chattels. The early English cases, by refusing to recognize that any interest in stock could pass by delivery without indorsement and transfer on the books, created the anomalous situation of the donee's being in possession and unable to benefit by it and the donor's having the legal title without being able to recover possession. *Rummens v. Hare* (1876) L. R. 1 Exch. Div. 169. The prevailing American doctrine is to the effect that, although a transfer on the books is required to vest the legal title, a valid gift *inter vivos* is created by the mere delivery of an unindorsed certificate of stock. *Herbert v. Simson* (1915) 220 Mass. 480, 108 N. E. 65; see (1918) 27 YALE LAW JOURNAL, 956. This applies whether the gift is absolute or in trust. *Talbot v. Talbot* (1911) 32 R. I. 72, 78 Atl. 535. Conceding that a valid gift in trust may be created by delivery, was there a delivery in the instant case? It would seem logical and desirable to follow again the chattel analogy and hold that antecedent possession by the donee, coupled with words indicating a present intention to make a gift in trust, is sufficient. *Stoneham v. Stoneham* [1919] 1 Ch. 149; *Porter v. Gardner* (1891) 60 Hun, 571, 15 N. Y. Supp. 398;